

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GERMAN RIOS DAVILA,

Petitioner,

-v-

No. 11CV0496-LTS-FM

WILLIAM LEE, Superintendent,

Respondent.

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MEMORANDUM ORDER ADOPTING REPORT AND RECOMMENDATION

On December 30, 2014, Magistrate Judge Frank Maas issued a Report and Recommendation (“Report”) recommending that the petition of German Rios Davila (“Petitioner”) for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be denied. No objections to the Report were received by the original deadline of January 16, 2015, imposed by Judge Maas. On January 26, 2015, this Court received a letter from Petitioner requesting an extension of time for submission of objections to March 18, 2015 (see docket entry no. 35), which the Court granted on January 28, 2015. (See docket entry no. 36.) Objections have not been received as of the date of this Order. Thus, the Court considers any objections to be waived for purposes of appeal. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72(b); Thomas v. Arn, 474 U.S. 140 (1985).

When reviewing a report and recommendation, the Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C.S. § 636(b)(1)(c) (LexisNexis 2012). “To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself

that there is no clear error on the face of the record.” Wilds v. United Parcel Service, Inc., 262 F. Supp. 2d 163, 169 (S.D.N.Y.2003) (internal citations and quotation marks omitted)).

Having reviewed Magistrate Judge Maas’ thorough and well-reasoned Report, to which no objection was made, the Court finds no clear error. Therefore, the Court adopts the Report in its entirety. Accordingly, the Court denies Davila’s petition.

The petitioner may not appeal this order unless “a circuit justice or judge issues a certificate of appealability.” 28 U.S.C.S. § 2253(c)(1) (LexisNexis 2008). A certificate will be granted “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.S. 2253(c)(2) (LexisNexis 2008); see generally United States v. Perez, 129 F.3d 255, 259-60 (2d Cir. 1997) (discussing standard for issuing a certificate of appealability). The Court finds that Petitioner will not be able to sustain this burden. Thus, the Court declines to issue a certificate of appealability.

The Clerk of Court is respectfully requested to enter judgment denying the petition and close this case.

SO ORDERED.

Dated: New York, New York
April 9, 2015

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge

Copy mailed to:

German Rios Davila
DIN# 03-A-3078
Green Haven Correctional Facility
P.O. Box 4000
Stormville, NY 12582